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REMARKS

Claims 1, 13, 26, 46, and 48 have been amended. Forty-one claims remain pending in the application: Claims 1-11 and 13-38 and 46-49. Reconsideration of claims 1-11 and 13-38 and 46-49 in view of the remarks below is respectfully requested.

Election/Restrictions

The Examiner indicated in the outstanding office action that claims 1-12 and 39-49 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

The Examiner has not addressed the arguments presented by Applicants in the response filed by Applicants on January 27, 2005. Therefore, Applicants repeat their prior arguments herein and request that the Examiner address such arguments.

Claims 1-11 and 46-49 are directed to the same generic group, i.e. group 1, as elected claims 13-38. Group 1 was classified in the restriction requirement mailed July 8, 2004 as class 2, subclass 239 drawn to a sock garment. Applicants point to 37 CFR 1.141(a) which states:

Two or more independent and distinct inventions may not be claimed in one national application, except that more than one species of an invention, not to exceed a reasonable number, may be specifically claimed in different claims in one national application, provided the application also includes an allowable claim generic to all the claimed species and all the claims to species in excess of one are written in dependent form (§ 1.75) or otherwise include all

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the limitations of the generic claim. (emphasis added)¹

Applicants respectfully submit that independent claims 1, 46, and 48 (which the Examiner has withdrawn from consideration) include each of the limitations of elected generic claim 13 including (1) a heel section adapted to receive a heel of the wearer therein, (2) an arch section, and (3) a plurality of separated, closed toe sections separated by trough regions to receive toes of the foot of the wearer, the toe sections joined by nested, overlapping material portions where the toe sections intersect (Applicant amendments indicated by underlined text). Further, dependent claims 2-11, 47, and 49 should likewise be considered because they inherently include each of the limitations of the claim from which they depend (i.e. claims 1, 46, and 48). Therefore, because there is a generic claim (i.e. claim 13) which links each of the above species of the elected group 1, it is respectfully requested that the Examiner consider the patentability of claims 1-11 and 46-49.

If the Examiner will not consider the patentability of claims 1-11 and 46-49, Applicants respectfully request that the Examiner provide an explanation as to why claim 13 is not generic to claims 1-11 and 46-49.

Claim Rejection under 35 USC § 102

1. Claims 13, 22, 26, and 35 stand rejected under 35 USC 102(b) as being anticipated by US Patent No. 1,314,356 of Nordblad (herein the '356 patent).

The '356 patent describes a toe sock having "toe pockets

¹ Also see MPEP 806.04(d)

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being formed to normally overlap each other in regular order".² Figure 2 of the '356 patent shows a plan view of toe pockets 2 overlapping one another "[extending] in a straight line throughout the foot and toe portions of the stocking".³ Figure 3 of the '356 patent, an edge view of the toe portion of the stocking, shows "how the toe pockets overlap when the stocking is flattened out."⁴ As described in the specification and depicted in the figures, the '356 patent shows toe pockets overlapping each other along the entire length of the toe pocket.

In contrast to the '356 patent, the present application teaches overlapping portions limited to the area where the toe sections intersect, i.e. at the apex.⁵ Additionally, the present application teaches, and claims, toe sections separated by trough regions.⁶ The '356 patent has no trough sections because the toe sections overlap along the entire length of the toe pockets. In order to further clarify the present application from the '356 patent, pending independent claims 1, 13, 26, 46, and 48 have been amended to include the limitation, "...closed toe sections separated by trough regions to receive toes of the foot of the wearer, the toe sections joined by nested, overlapping material portions where the toe sections intersect." Support for the amendments can be found in the specification as originally filed at least at page 10, lines 3-15.

In conclusion, the '356 patent does not teach each and every limitation of claims 1, 13, 26, 46, and 48. As claims 22 and 35 depend from claims 13 and 26, it is respectfully

² See claim 1 of the '356 patent

³ See column 2, lines 71-72 of the '356 patent

⁴ See column 1, lines 34-36 of the '356 patent

⁵ See page 10, lines 11-13

⁶ See page 10, line 5 of the present application

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requested that the present rejection be withdrawn from each of the claims 13, 22, 26, and 35.

Claim Rejections under 35 USC § 103

2. Claims 19, 20, 32, and 33 stand rejected under 35 USC 103(a) as being unpatentable over US Patent No. 1,314,356 of Nordblad.

Claims 19, 20, 32, and 33 are patentable over the '356 patent because each and every limitation of the claimed invention is not taught by the '356 patent. As described above, independent claims 13 and 26, from which claims 19, 20, 32, and 33 depend, recite a toe sock having "...closed toe sections separated by trough regions to receive toes of the foot of the wearer, the toe sections joined by nested, overlapping material portions where the toe sections intersect." Conversely, the '356 patent teaches a toe sock having toe pockets overlapping each other along the entire length of the toe pocket, and, therefore, having no trough regions.

Thus, for at least the reasons presented above, as well as the arguments set forth on pages 11 and 12 of this paper, Applicants respectfully request that the present rejection be withdrawn from claims 19, 20, 32, and 33.

3. Claims 14, 15, 17, 18, 27, 28, 30, and 31 stand rejected under 35 USC 103(a) as being unpatentable over US Patent No. 1,314,356 of Nordblad in view of US Patent No. 5,555,565 of Gallagher (herein the '565 patent).

Claims 14, 15, 17, 18, 27, 28, 30, and 31 are patentable over the '356 patent and the '565 patent because each and every limitation of the claimed invention is not taught by the '356 patent in combination with the '793 patent. As described above,

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independent claims 13 and 26, from which claims 14, 15, 17, 18, 27, 28, 30, and 31 depend, recite a toe sock having "...closed toe sections separated by trough regions to receive toes of the foot of the wearer, the toe sections joined by nested, overlapping material portions where the toe sections intersect." Conversely, the '356 patent teaches a toe sock having toe pockets overlapping each other along the entire length of the toe pocket, and, therefore, having no trough regions. The '565 patent teaches a sock having no closed toe sections at all.

Thus, for at least the reasons presented above, as well as the arguments set forth on pages 11 and 12 of this paper, Applicants respectfully request that the present rejection be withdrawn from claims 14, 15, 17, 18, 27, 28, 30, and 31.

4. Claims 14, 16, 21, 23, 24, 27, 29, 34, 36, and 37 stand rejected under 35 USC 103(a) as being unpatentable over US Patent No. 1,314,356 of Nordblad in view of US Patent No. 4,898,007 of Dahlgren (herein the '007 patent).

Claims 14, 16, 21, 23, 24, 27, 29, 34, 36, and 37 are patentable over the '356 patent and the '565 patent because each and every limitation of the claimed invention is not taught by the '356 patent in combination with the '007 patent. As described above, independent claims 13 and 26, from which claims 14, 16, 21, 23, 24, 27, 29, 34, 36, and 37 depend, recite a toe sock having "...closed toe sections separated by trough regions to receive toes of the foot of the wearer, the toe sections joined by nested, overlapping material portions where the toe sections intersect." Conversely, the '356 patent teaches a toe sock having toe pockets overlapping each other along the entire length of the toe pocket, and, therefore, having no trough regions. The '007 patent teaches a sock having no closed toe

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sections at all.

Thus, for at least the reasons presented above, as well as the arguments set forth on pages 11 and 12 of this paper, Applicants respectfully request that the present rejection be withdrawn from claims 14, 16, 21, 23, 24, 27, 29, 34, 36, and 37.

5. Claims 25 and 38 stand rejected under 35 USC 103(a) as being unpatentable over US Patent No. 1,314,356 of Nordblad in view of US Patent No. 4,898,007 of Dahlgren, and further in view of US Patent No. 4,958,507 of Allaire et al (herein the '507 patent).

Claims 25 and 38 are patentable over the '356 patent, the '007 patent, and the '507 patent because each and every limitation of the claimed invention is not taught by the '356 patent in combination with the '007 and '507 patents. As described above, independent claims 13 and 26, from which claims 25 and 38 depend, recite a toe sock having "...closed toe sections separated by trough regions to receive toes of the foot of the wearer, the toe sections joined by nested, overlapping material portions where the toe sections intersect." Conversely, the '356 patent teaches a toe sock having toe pockets overlapping each other along the entire length of the toe pocket, and, therefore, having no trough regions. The '007 and '507 patents teach a sock having no closed toe sections at all.

Thus, for at least the reasons presented above, as well as the arguments set forth on pages 11 and 12 of this paper, Applicants respectfully request that the present rejection be withdrawn from claims 25 and 38.

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Claims Withdrawn by the Examiner

Claims 1, 46, and 48 have been amended to place them in condition for allowance. Although the Examiner has indicated that claims 1, 46, and 48 have been withdrawn from consideration, Applicants believe the claims to be generic to claim 13 and, thus, have amended the claims to expedite issuance of all of claims 1-11 and 13-38 and 46-49.

Fees Believed to be Due

The director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number 06-1135.

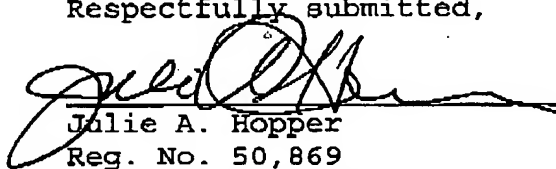
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CONCLUSION

Applicants submit that the amendments and remarks provided herein place the pending claims in condition for allowance, including claims 1-11 and 39-49 which the Examiner has indicated are withdrawn from the application. Therefore, a Notice of Allowance is respectfully requested. However, should there remain any outstanding issues that require adverse action, it is respectfully requested that the Examiner telephone Richard E. Wawrzyniak at (858) 552-1311 so that such issues may be resolved as expeditiously as possible.

Respectfully submitted,

Date: 7/5/05


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